

WORKING GROUP 30 APRIL BRIEFING NOTE

Meeting Objectives – DN TO COMPLETE LAST

- To ensure that we make and land any points that we might later need to rely on when handling SS and JFSA.
- To ensure our point are on the record and should the Working Group accept the letter contains inaccuracies get a clear undertaking as to how the inaccuracies will be corrected.
- Challenge Second Sight's Part one report where it makes non factual and evidenced statements, making clear this is unacceptable to Post Office.
- Challenge the M022 report for its poor quality, where it fails to make evidenced statements, for its unacceptable tone and partial addressing of issues.
- Review the Alan Bates letter line by line and challenge the factual inaccuracies

COMMENTARY ON THE ALAN BATES LETTER

Date of the Letter

The letter was sent on 16 April the day before the weekly conference call.

At that conference call the following issues were discussed:

- Status of overdue CQRs
- New CQRs
- Reports uploaded by Post Office for Second Sight's review
- Quality of POL reports was raised (for the first time) by SS – it was agreed that SS should document this in their reports.
- Discussed that Post Office was “reviewing” previously submitted reports
- Noted that SS had not yet started work on the bulk of the reports provided by POL

The letter was not raised by Alan Bates not did he raise the issues contained in it.

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Timescales

POL target of 4 weeks is accurately reflected BUT

- POL made clear at Working Group that these were aspirational targets and that cases might well take substantially longer (NB no minute to support this at this point).
- JFSA blocked the attempt to set realistic deadlines for the POL investigations at the Working Group on 1 April 2014.

Second Sight target of eight weeks is not accurate:

- Second Sight were set an internal target of 4 weeks – this target date has been reported on in all Working Groups and not challenged by Second Sight or JFSA
- Second Sight have not delivered any report within 4 weeks
- Second Sight have not delivered any report within 8 weeks DN check
- The 8 week timeline is probably reached by taking the 4 weeks for POL away from the 12 week target in the published Scheme documentation.

Page 2**Mediators Briefing Pack**

- The pack would be produced by Second Sight
- To assist Second Sight they were provided with a POL draft and offers of meetings to take this forward on the following dates:

Thursday 13 March	First draft of Factfile sent to SS.
Wednesday 19 March	Initial comments received from SS
Friday 21 March	Proposed meeting to discuss factfile - cancelled by SS
Thursday 27 March	Re-arranged date for meeting to discuss factfile – cancelled by SS.
Monday 31 March	POL responses to SS initial comments sent to SS (via a revised version of the Factfile being uploaded on to huddle in advance of the WG meeting on 1 April)
Wednesday 16 April	Revised factfile with new sections sent to SS + invitation to meet with SS to discuss
Tuesday 29 April	SS submit Part 1 Report

Scheme Documentation agreed in August 2013

- Scheme documentation was agreed in August 2013.
- Process set out in the documentation is not that in the letter.
- Documentation included FAQ:

“Is it possible that the structure of the Scheme may change over time?”

Yes – the Working Group is tasked with making sure that the Scheme is operating effectively. It may therefore be necessary to revise the Scheme as appropriate.”

During the time the Scheme was open 150 applications were accepted

- Not accurate. 147 applications were received in time. 3 late applications were considered on 1 April.
- Of the 150 applications in total 4 were rejected and 9 withdrew.

Others would have applied if they had been aware of the Scheme

- Scheme was publicised by JFSA and POL
- To date only one application has come through from an MP (Oliver Heald case)

Stats breakdown on page 2

Serving SPMRs

- Alan states:
"As POL became aware of serving SPMRs submitting application forms, POL requested these cases to be held back from fully entering the Scheme until such time as POL had had an opportunity to discuss those cases directly with the SPMRs. Some of these cases remain in that position."
- This is not an accurate reflection of events. Page one of the Scheme documentation (agreed with JFSA and hosted on their website) states:

"If a serving Subpostmaster wants to use the Scheme, he or she must have already raised their case with Post Office and have completed all Post Office's internal complaint processes"

- Further the Scheme documentation FAQs state:

"What are the eligibility criteria for the Scheme?"

You must meet both the following criteria.

First, your case must relate to a financial loss or unfair treatment that you believe you have suffered as a result of the Horizon system or any associated issues.

Secondly, if a serving Subpostmaster wants to use the Scheme, he or she must have already raised their case with Post Office and have completed all Post Office's internal complaint processes. For example, a Subpostmaster who wishes to dispute a transaction or series of transactions in their branch should first raise this matter with NBSC and assist with any subsequent Post Office enquires. If a currently serving Subpostmaster needs advice on how to raise a matter internally with Post Office they should email branch.support.team@postoffice.co.uk."

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POL have provided no reports to Second Sight.

- POL submitted first report to SS on 28 November (M009).
- POL invited feedback on report content (AVDB email of 28 November)

I'd appreciate your comments on the format, style and content of these documents. We're trying to produce these documents in a way that is of most use to you and, in the future, Spmr's – hence the short delay in providing these documents. In particular, these documents have been prepared to assist with identifying:

- *Points of common ground between POL and the Spmr.*
- *Points of disagreement.*
- *Where there is disagreement, the foundation for a logical and evidenced opinion on the merits of the SPMR's complaint.*
- *And ultimately, by pulling together the above 3 points, a recommendation on whether the case is suitable for mediation.*

I'm of course very happy to discuss how to review and refine our approach to meet these objectives so that the Working Group will be able to reach a decision when the case is presented to it for a decision on whether mediation is appropriate."

- SS commented:

"Wow, this looks really good....

Really appreciate the work done to pull this together.

Let's discuss in a few days time

With best wishes

*Ian R Henderson CCE CISA FCA
Advanced Forensics - London, UK"*

- SS produced reports on three case M001, M009 and M014 for the WG meeting on 7 March.
- TH provided detailed feedback on structure of reports SS have delivered the first report in the new structure on 30 April.

- SS did not raise quality of POL investigations as a concern with James Arbuthnot MP when they briefed him for his meeting with Paula Vennells and Alice Perkins on 28 January.
- SS commended Post Office investigators at MPs meeting on 24 March
- SS
- On 17 April the day after the letter was despatched the Working Group noted that Post Office had sent 20 investigation reports to Second Sight (source case tracker).
- On the 17 April call Post Office agreed to take these reports down while the format of the executive summary was tweaked. This follows an action at the previous face to face meeting to “review” the reports.
- By the date that Alan sent the letter he had downloaded eight POL investigation reports:

Case	AB (JFSA)
M009	Downloaded 27.2.14 at 08:47
M014	Downloaded 27.2.14 at 11:00
M017	Downloaded 21.3.14 at 20:20
M019	Downloaded 21.3.14 at 20:23
M021	Downloaded 21.3.14 at 20:27
M022	Downloaded 21.3.14 at 20:30 Then again 27.3.14 at 19:29 Then again 29.3.14
M028	Downloaded 20.3.14 at 11:16
M054	Downloaded 29.3.14

Advisor Costs

- Levels of funding were made clear to applicants in the Scheme documentation:

“Post Office will pay up to £1,500 + VAT towards the reasonable costs of a professional advisor assisting you during Second Sight's investigation (i.e. gathering information, completing the Case Questionnaire, responding to Second Sight's questions, etc.).”

What if I need more financial support?

It is for you to manage your professional advisor's costs.

Advisor timeliness

- Reference the amount of overdue CQRs and amount provided in 2- 4 weeks
-

POL report quality insufficient to allow Second Sight to undertake their work

DN see above

POL have a contractual obligation to investigate where they believe a crime has taken place

- No such obligation exists

It seems POL did not investigate in any of the 150 cases

- This is not true.
- Approximately 1/3 of the case load have some form of criminal conviction.
- We have discussed on numerous occasions cases that are under investigation and the Chair has provided updates to the Working Group on these case.
- Further we have discussed in detail case M001 with Alan including a detailed discussion of the 5 day High Court Civil trial and the 30 page judgement.

“POL in these two cases, as they have done with so many others, went straight to prosecution using a fall-back contractual clause that the SPMR is liable for all losses regardless of how they occurred, without ever bothering to investigate the cause behind the incidents”

- This is not true.

- **The two cases Alan refers to were not prosecuted. (M054 and M022) DN check**
- Not clear how the generalisation is arrived at.
- Alan had only downloaded eight reports at this point and Post Office had completed twenty reports it is unclear how this judgement on a caseload of 150 has been reached.
- The clause is a core part of the SPMR contract.
- Prosecutions for false accounting do not rely on the contract but on "the knowing submission of inaccurate accounts." **DN Andy can you provide the legal basis for the false accounting charges.**

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Current investigations are only an articulation of already known issues

- Not true.
- Large quantities of evidence being gathered and reviewed by the Post Office Investigators and Second Sight

Allegations of causal links to “suicides, attempted suicides, numerous medical conditions”

- Post Office only aware of one (tragic) suicide.
- No causal links to any issues.

Allegation that imprisonments, bankruptcies, destroyed family lives and businesses are caused by POL’s failure to address Horizon associated issues.

- Not true.
- Alan has brought forward no evidence of these linkages.
- Cases have had impact on family lives, businesses and bankruptcy but no evidence that this has been caused by Horizon associated issues.

Protection of public purse as last line of defence

- Not accurate.
- Value for money is an important consideration for any publicly funded body
- There is not an unlimited amount of money available for the Scheme
- This point was made to James Arbuthnot on 28 January:

“AP pointed out that in terms of any spend by Post Office they are a publicly funded organisation and the Post Office Board would wish to consider whether any further work by Second Sight was good value for money given the amount of money being spent on the scheme and the need to be able to assure external parties such as the NAO that good value for money was being obtained.”

Need to resolve the issue through the media and the courts

- Disagree and feel this is an unfortunate stance.
- Goes against the confidentiality of the Working Group, undermines mediation and could be construed as a threat.

So much more has come to light

- Unclear what Alan is referring to.

2nd Sight are probably the only company presently able to offer an independent professional and reasoned insight into what has been going wrong within POL and Horizon over the years.

- No evidence of SS providing this kind of insight
- No reason that SS are the only company who could provide this service

The only one refusing to accept the truth is POL

- Unclear what the “truth” Alan is referring to is.

SECOND SIGHT CONCERNS

1. WG Confidentiality
 - a. Concern: it appears that SS (and AB) are communicating WG discussions to Applicants / Third Parties.
 - b. Example: In the letters from Aver and Howe – they both reference that POL was receiving repeated extensions – this could only have come from inside the WG.
 - c. Objective: Reiterate the need for WG discussions to be confidential.
2. Objective of investigation process:
 - a. Is the objective to "build a foundation for resolution at mediation" or "find the truth".
 - b. The former is quicker and more practical.
 - c. The latter requires SS to become a decision maker – much more onerous in terms of resourcing / time / etc.
 - d. Also the latter is impossible – SS has no power to test credibility of evidence (ie. no cross examination of witness testimony; no criminal sanctions for lying; etc.) and therefore will never find the truth.
 - e. Objective: Agreement to limit investigations to practical conclusions that help mediation process
3. Scope creep
 - a. SS are not looking at safety of convictions and the fairness of the contractual structure between POL and SPMRs.
 - b. Example: this issue has been raised in drafts of both the thematic report and individual reports.
 - c. Both items are outside SS' expertise and so they should not be commenting.
 - d. These are also not "Horizon related" and are therefore arguably outside the scheme.
 - e. Objective: Direction from the Chair to narrow scope of investigation.
4. SS investigation process
 - a. Should this be based only on the information provided by POL and in the CQR, or
 - b. Should SS be free to ask questions of applicants?
 - c. If option "B", what impact will this have on the timetable.
 - d. Objective: push for option "A"
5. SS communication with PAs / Applicants
 - a. No transparency of SS' interactions with PAs or Applicants
 - b. Impacts on managing workflow if mixed messages are being relayed.
 - c. Objective: greater transparency of communications from SS.
6. SS "hardening of CQRs"
 - a. What does this entail?

- b. Are SS maintaining impartiality or are they now helping Applicant's to construct cases?
 - c. How is this impacting on the timings of the process?
 - d. Could the questioning process at 3(b) be integrated here?
 - e. Objective: Get greater clarity on what SS are doing to warrant this work.
- 7. Lack of SS interaction with POL.
 - a. SS are not directing any questions to POL.
 - b. If not getting info from POL then there is a one-sided flow of info from applicants.
 - c. Example: no engagement on factfile despite offers of meetings.
 - d. Objective: Encourage SS to pro-actively consult POL on issues rather than raising matters in front of the WG.

SECOND SIGHT PRODUCTS

The Second Sight Initial Complaint Review and Mediation Scheme Branch Operating Procedures (The Factfile / Part 1)

Summary

There are a number of issues with this report, most notably relating to scope and purpose: the basis of this report is to assist the mediation process and not, as this report claims, to underpin the *Thematic Issues* report. As a fundamental part of its purpose in assisting mediation, the Part 1 report was intended to be a neutral factual statement. Despite this, there are at least 14 points in the report which are based on Second Sight's opinion and are not supported by either logical reasoning or evidence. These opinions would be better presented in the Thematic Report but even then they would require proper justification based on evidence. As well as these issues, the report also: contains a number of factual errors; includes statements based on analysis (rather than fact); omits some crucial information; includes some statements phrased in a misleading / confusing manner; has a minor structural issue which requires amendment, and; contains an unnecessary, irrelevant and time-consuming request for information. These issues are all detailed below.

Purpose and Scope

- Second Sight state that the basis of the factfile is to provide a factual underpinning of their *Thematic Issues* report, but the factfile is not connected to the *Thematic Issues* report. Rather, the basis of the factfile is to assist the mediation process, namely by providing the mediator and parties with factual information regarding Post Office processes and terminology. Ref: 1.1.

Factual errors

- The report refers to the Post Office charging SPMRs a fee before allowing them to operate a branch, which is no longer correct. This point also seems irrelevant. Can Second Sight confirm which case this relates to, as it does not seem to be referred to in any CQR? Ref: 3.5
- The report claims that the Horizon system contains testing and training, which it does not as it is an IT system. Ref 5.3
- "Similarly, if there is an interruption to the communication channel and/or a failure to automatically connect to the mobile backup device during a customer transaction, Horizon will *try* to prompt the user with on-screen

messages explaining what to do to and whether to cancel or retry the transaction". System does not 'try' to do this, it 'will' do it. Ref 5.19

- "If however an investigation is not fully conclusive then the onus reverts to the Subpostmaster to determine the source of the error and deficiency and to personally settle any amounts due". Not correct e.g. if the cause of a lost cheque cannot be determined, PO absorbs this loss. Ref 8.17

Opinion, rather than fact-based, content

- "The [SPMR] contract also (unusually in normal commercial terms) provides the right for a Subpostmaster to withdraw and retain any surpluses that arise in the normal course of business (*contract clause 12(14)*)". Referring to 'normal commercial terms' is opinion. Ref 3.13
- "Although the focus of this review relates principally to the operation of "Agency" branches, there are other types of branches within the Post Office network, which are staffed in a different manner, more akin to a normal commercial operation. These include "Crown" branches and "Multiples" as described below". Not only is this opinion, it also suggests that the position with agency branches is abnormal, which is not correct. Ref 3.20
- "Representation and guidance is available to Subpostmasters from the NFSP in the event of disputes, although the extent and quality of this assistance has been questioned by a number of applicants". Ref 3.27
- "We understand that the performance of the NBSC staff is (unusually) measured solely on the time advisors take to answer the phone". Ref 4.8
- Referring to 'Branch Support' process: "It is however clear from cases reported to us, that this procedure has, on occasions, either not been followed, or did not work, or did not produce the needed results". Ref 4.17
- "Despite this description of an apparently extensive support mechanism, feedback during the Complaint Review process has indicated a lack of consistent, constructive advice being provided, especially from the Horizon Service Desk and from the NBSC". Ref 4.22
- "As set out below the nature of this training has evolved over time and although seemingly comprehensive, examples reported during the Complaint Review process have shown that the quality of the training may not be consistent or, in many cases, may simply be insufficient". Ref 4.25
- "[Post Office has undergone a number of structure reviews which have influenced the support Post Office provides to Subpostmasters and their branches]. As a result, Post Office's approach to structuring its agency relationships with Subpostmasters has evolved over time with an increasing focus on business development and sales performance". Ref 4.32
- "The use of the term "*audit*" to describe a simple cash and stock count, even if supplemented by a Compliance Audit, is potentially misleading and has been

challenged by many Subpostmasters. It also appears that associated training needs are not always consistently identified or delivered". Ref 4.41

- "Whilst this is how the system should operate, it would appear that the nature of these instructions is not always logical or clearly set out and there is a risk of transactions being lost. The steps which need to be taken (as directed by Horizon) will depend on whether the transaction is "recoverable" or "non-recoverable". Ref 5.18
- "Whilst it might appear from the above that any errors should be easy to identify, the multiplicity of transactions and the lack, in some cases, of a clear and easily available audit trail may mean that the source of errors during a process is not always easy to determine". Ref 7.2
- "[**Settle centrally and dispute the shortage** - if the Subpostmaster believes that the shortage was not his/her fault or could be resolved through other means, then the debt will be suspended to allow time for the shortage to be investigated and remedied. The Subpostmaster can dispute a shortage by contacting the Network Business Service Centre, Cash Centre (for remittance disputes) or the Finance Service Centre at Post Office to have the debt suspended pending an investigation]. It would appear that not all Subpostmasters are aware of this third option". Ref 8.16
- "The problem with following this procedure is that the delivery may occur during branch opening hours and the only way to carry out this check in an effective manner is to close the branch for a period, which is normally impractical". Ref 9.24
- The entire Executive Summary is opinion-based and would be more appropriate in the Thematic Report. Ref 9.5 - 9.7

Analysis, rather than fact-based, content

- "The adoption of these response driven rather than quality driven performance metrics [NBSC targets] may contribute to the concerns expressed by a number of applicants as to the quality of advice and support received from the NBSC and the Horizon Service Desk". Ref 4.10
- "A number of calls by Subpostmasters for support are made to the wrong helpline and have to be redirected. This may of course indicate a lack of clarity and understanding by Subpostmasters as to whether problems encountered are system or procedurally related, especially if calls are not promptly returned to the Subpostmaster as promised by either the HSD or the NBSC". Ref 4.13

Unnecessary, irrelevant and time-consuming request for information

- "[SUGGEST INCLUDING AS ANNEX 3 A COPY OF THE CURRENT CONTRACT WITH AN AUDIT TRAIL OF RECENT SIGNIFICANT CHANGES – POL TO PROVIDE]" – relevant extracts would suffice. Ref 3.1

Omission of information

- Second Sight have removed a reference to Temps paying rent to SPMRs, which should be included in the document as it explains why suspension without pay is justified. Ref: 3.8
- “Some Post Office transactions, for example, Camelot/(Lottery)/PayStation/Post& Go are not transacted through a Horizon terminal but instead via separate equipment”. This omits to say that the SPMR needs to check and approve the Transaction Acknowledgment - it is not forced on the SPMR by POL. Ref 7.55
- “In cases of hardware failure requiring the replacement of branch equipment there is a possibility that not all data will have been successfully replicated before the failure of the old hardware with a consequent possible loss of data. There are however checks and procedures available, that if properly followed, should allow such transactions to be identified”. For this error to have occurred, there would have to be a complete failure of the core Horizon terminal mid-way through a non-recoverable transaction. Therefore the possibility of this is very very remote. Ref 9.54

Misleading / confusing phrasing

- “Transactions on Horizon are entered physically on a terminal in a branch and can normally only be processed (and subsequently identified) by a valid, approved user with a user ID and an associated password”. Please explain what is meant by ‘normally’? Transactions can only ever be processed in branch if a user is logged on. Ref 5.7
- “Staff at each branch are required to count and declare the cash stored in each stock unit at the end of each day. The actual cash on hand is recorded in Horizon by the Subpostmaster or his/her assistants. Horizon should then show any "discrepancy" between the cash on hand and the amount of cash that should be in the branch in order for the branch to balance”. Horizon does show the discrepancy. SS uses of the word "should" indicates that there could be an error in Horizon doing this calculation - there is no evidence whatsoever that this error exists. Ref 8.2
- “Therefore, Subpostmasters can in theory ascertain what transactions have taken place in branch and the amount that has been recorded against each transaction”. What does “in theory” mean? Ref 8.4

Structure

- NBSC section on page 6: only makes sense if the report first explains what Horizon is. Needs re-ordering.

PO to check

- “Given the limited number of NBSC staff and that most queries from Subpostmasters in the 11,500 branches relate to the monthly end of trading process (see below) the potential peaks of call volumes has been smoothed by grouping branches in order to stagger their month end timetables”. Ref 4.6
- Is this correct - this is not from the Factfile. *Query with AH*
- Horizon records all data centrally in the Branch Database in the Post Office Data Centre and a copy of all transactions is also made to a separate audit server where they are stored independently. We have been told that a limited number of security personnel at Post Office have read-only access to this audit server. Is this correct? Is it not only FJ who can access the data? Ref 5.8. *Query with AVDB*
- ‘Connectivity’ section is a new section which needs checking by PO (but appears OK to AP). *Query with AVDB*
 - “Each Horizon terminal requires a direct connection to the central Post Office data centres in order to process transactions” if this section is included - then should also include a para explaining that the comms line is provided by the SPMR and is their responsibility. Ref 5.12.
Query with AVDB
- “There are a number of tools in Horizon that can assist Subpostmasters with tracing or identifying discrepancies. For example, transaction logs can be run which show the transactions that have taken place. These logs can be searched using parameters such as product type, user and time of the transaction. Event logs also provide information about user activity and a "Balance Snapshot" shows what Horizon believes is the state of the branch accounts at that point in time. [ARE ALL OF THESE TOOLS KNOWN TO AND AVAILABLE TO A SUBPOSTMASTER AND ARE THEY TRAINED IN THEIR USE?]. PO to answer. Ref 8.3. *Query with AVDB*